

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF PUERTO RICO

4 ROSA MERCADO-SANTONI and
5 MARCOS MUÑÍZ-MERCADO,

6 Plaintiffs,

7 v.

8 HOSPITAL BUEN SAMARITANO, et al.,

9 Defendants.

Civil No. 09-1829 (JAF)

10 **OPINION AND ORDER**

11 Plaintiffs, Rosa Mercado-Santoni and Marcos Muñiz-Mercado, bring this diversity action
12 for medical malpractice under Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A.
13 §§ 5141–5142 (1999), against Hospital Buen Samaritano, Inc. (“HBS”) and various unknown
14 defendants. (Docket No. 1.) HBS files for summary judgment, arguing that the statute of
15 limitations for the cause of action has run out. (Docket No. 9.) Plaintiffs oppose. (Docket
16 No. 16.)

17 We grant a motion for summary judgment “if the pleadings, the discovery and disclosure
18 materials on file, and any affidavits show that there is no genuine issue as to any material fact and
19 the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A factual dispute
20 is “genuine” if it could be resolved in favor of either party and “material” if it potentially affects
21 the outcome of the case. Calero-Cerezo v. U.S. Dep’t of Justice, 355 F.3d 6, 19 (1st Cir. 2004).

1 The movant carries the burden of establishing that there is no genuine issue as to any
2 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In evaluating a motion for
3 summary judgment, we must view the record in the light most favorable to the nonmovant, and
4 we must consider the entire record of admissible evidence. See Reeves v. Sanderson Plumbing
5 Prods., 530 U.S. 133, 150–51 (2000). “Once the moving party has made a preliminary showing
6 that no genuine issue of material fact exists, the nonmovant must produce specific facts, in suitable
7 evidentiary form, to establish the presence of a trialworthy issue.” Clifford v. Barnhart, 449 F.3d
8 276, 280 (1st Cir. 2006) (internal quotation marks omitted). The nonmovant “may not rely merely
9 on allegations or denials in its own pleading; rather, its response must . . . set out specific facts
10 showing a genuine issue for trial.” Fed. R. Civ. P. 56(e)(2).

11 A tort suit brought under Articles 1802 and 1803 must be commenced within one year of
12 the first day the suit could have been filed. See 31 L.P.R.A. §§ 5298, 5299. In medical
13 malpractice cases, the term of one year to bring the action is calculated once the affected party
14 knows the origin of the damage and the reason for the cause of the damages. See Riley v.
15 Rodríguez de Pacheco, 19 P.R. Offic. Trans. 806, 821 (1987).

16 In this case, Mercado-Santoni knew of the origin and reason for the cause of action in
17 November 2007, at the latest. (Docket No. 9 at 8.) However, this lawsuit was filed on January 21,
18 2009, two months after the one-year term for filing the complaint had passed. (Docket No. 9 at
19 1.) Mercado-Santoni concedes that her claim is barred by the statute of limitations. (Docket
20 No. 16 at 1.)

1 Muñiz-Mercado’s mental incapacity prevents the statute of limitations from barring his
2 claim. While Puerto Rico’s Civil Code provides that statutes of limitations shall run against “all
3 kinds of persons,” see 31 L.P.R.A. § 5243 (1990), an exception to this general rule is made for
4 minors and the mentally disabled, see 32 L.P.R.A. § 254 (2004). See Torres v. P.R. Water Res.
5 Auth., 96 P.R. 634, 637–38 (1968). In the case of mental disability, the statute of limitations is
6 tolled, so long as the individual does not return to his full mental capacity. See id. at 637 n. 1.
7 Furthermore, the fact that the mentally-incapacitated person has a legally-appointed guardian does
8 not prevent the tolling of the statute of limitations. Id.

9 Muñiz-Mercado was recently deemed mentally incapacitated by a Florida court. (See
10 Docket No. 16-3 (appointing Mercado-Santoni as Muñiz-Mercado’s legal guardian).)
11 Furthermore, Mercado-Santoni attests that Muñiz-Mercado suffered said incapacity when the
12 alleged tort occurred and that it continues through the present day. (Docket No.17-1.)
13 Defendants present no challenge to the claim of Muñiz-Mercado’s mental incapacity. Thus,
14 because of his mental incapacity, Muñiz-Mercado’s claims are not time-barred.

15 For the foregoing reasons, we hereby **GRANT** in part and **DENY** in part HBS’ motion for
16 summary judgment. (Docket No. 9). We dismiss Rosa Mercado-Santoni’s claims but retain
17 Muñiz-Mercado’s claims.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 25th day of August, 2010.

20 s/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 Chief U.S. District Judge